

prominent standard statement on each billing statement or in the payment coupon book informing the borrower that the lender will apply the payments to future installments and will advance the borrower's next scheduled payment due date consistent with the number of additional full payments received is comparable to the separate notification the lender may send after receipt of such additional payments. A sentence has also been added to this provision to clarify that information related to advancing the borrower's scheduled payment due date need not be provided if the borrower makes the prepayment during an in-school, grace, deferment, or forbearance period.

#### *Section 682.210 Deferment*

*Comments:* Many commenters objected to the proposed clarifying language that would restrict a defaulted borrower's eligibility for deferment, as a result of arrangements made with the holder of the loan, to the period up to the lender's filing of a default claim with the guaranty agency. Many of these commenters felt strongly that a lender should have the maximum flexibility in working with a borrower, at least up until the default claim is paid by the guaranty agency, to avert the claim payment, the point at which the borrower is subject to adverse consequences of the default and the default becomes a cost to the federal government. These commenters felt this more restrictive language would severely hamper supplemental preclaims assistance efforts of guaranty agencies that take place during this period. A couple of these commenters recommended that the clarifying language be revised to allow a lender to retrieve a loan from a guaranty agency even after default claim payment if satisfactory arrangements can be made with the borrower. One commenter recommended that the provision be revised to provide that a borrower is not eligible for deferment after default unless the borrower's eligibility for the deferment began prior to the default or, if that is not the case, unless the borrower makes satisfactory repayment arrangements with the lender prior to guaranty agency payment of the default claim. Another commenter recommended that language be included in this provision that clarifies that a lender's granting of a deferment after the filing of the default claim is at the lender's discretion. Several commenters recommended eliminating the word "repayment" from the phrase "satisfactory repayment arrangements" in order to clarify that the payment arrangements made with the holder for

the purposes of this provision need only be acceptable to the holder, as opposed to meeting the statutory requirement for a borrower who is in default to regain eligibility for additional Title IV student assistance. Another commenter recommended that the Secretary retain the current regulatory language because the commenter interprets the provision as allowing a borrower in default to be entitled to a deferment if satisfactory repayment arrangements are made with the holder, regardless of whether the holder is a lender, a guaranty agency, or the Secretary.

*Discussion:* The Secretary believes that clarification of this provision is necessary because, as currently written, it suggests that a borrower who has defaulted on the repayment of a loan and whose loan is held by a guaranty agency or the Secretary can become eligible for deferment of repayment on that loan by making satisfactory repayment arrangements as that term is defined for regaining eligibility for Title IV student assistance. This has never been the Secretary's interpretation of the law with regard to deferment eligibility. The HEA excludes defaulted borrowers from certain program benefits, a major one of these being deferments. However, through this regulatory provision, lenders have always had the ability, at their option, to make payment arrangements with a borrower even after 180 days of delinquency in order to avert a default claim. After a guaranty agency has paid a claim, however, a borrower can regain eligibility for deferment on that loan only through loan rehabilitation or lender repurchase of that loan. A borrower who makes satisfactory repayment arrangements with a guaranty agency to regain eligibility for Title IV student assistance, as provided for under section 428F(b) of the HEA, does not regain deferment eligibility on that defaulted loan that remains with the agency. Borrowers are expected to continue to make payments on that loan after the six required payments necessary to regain eligibility, but guaranty agencies are strongly encouraged to provide forbearance to such borrowers on the loan during the borrower's in-school period. Only if the loan is successfully rehabilitated or a lender repurchase is arranged does the borrower regain deferment eligibility. After consideration of the comments, the Secretary has decided that lenders and guaranty agencies should be allowed to work with defaulted borrowers to avert default claim payment through the granting of deferments and other administrative methods provided in the FFEL program

until the guaranty agency pays the claim. This provides borrowers with ample opportunity to avert the consequences of default. The Secretary does not believe this provision should apply after default claim payment unless the lender determines the default claim was filed in error and recalls the loan from the agency. At the point a default claim is paid, Federal taxpayer funds have been used to repay the borrower's debt and the guaranty agency has lost the use of that money for other program purposes. The Secretary agrees that the phrase "satisfactory repayment arrangements" needs to be modified to avoid any misinterpretation of what is required for purposes of this provision. The term satisfactory repayment arrangements, as currently defined, is intended to apply only to the requirements a defaulted borrower must meet to regain Title IV eligibility. For purposes of this provision, the arrangements must only be acceptable to the lender and are left to the lender and borrower to work out. The Secretary also agrees that a lender's acceptance of payments or granting of deferments or forbearance as part of satisfactory arrangements to avert a default claim payment at the post-180 or post-240 day stage of delinquency are strongly encouraged, but optional on the part of the lender.

*Changes:* A change has been made. This provision of the regulations has been revised to provide for deferment eligibility of a defaulted borrower up to the payment of a default claim on the loan if the lender agrees to make payment arrangements with the borrower. The phrase "satisfactory repayment arrangements" has been revised to read "payment arrangements acceptable to the lender."

#### *Section 682.211 Forbearance*

*Comments:* All commenters agreed with the Secretary's proposal to allow lenders to apply an administrative forbearance in situations when a borrower ends a period of deferment in a delinquent status. Many commenters also recommended that the provision be expanded to include those borrowers ending a period of mandatory forbearance in a delinquent status. Another commenter recommended the addition of the phrase "until the next due date is established in accordance with section 682.209(a)(3)(ii)(B)" at the end of the provision.

*Discussion:* The Secretary agrees with the commenters.

*Changes:* A change has been made to include borrowers who have ended a period of mandatory forbearance in a delinquent status and the recommended